

Reinhart, Cynthia - Vol. 2 / Depo 12/20/2012 12:00:00 PM

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1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE DISTRICT OF NEW MEXICO  
3 SECURITIES AND EXCHANGE COMMISSION,  
4 Plaintiff,  
5 vs. NO: 12-257  
6 LARRY A. GOLDSTONE,  
7 CLARENCE G. SIMMONS, III,  
8 and JANE E. STARRETT,  
9 Defendants.  
10  
11 VOLUME 2  
12 DEPOSITION OF CYNTHIA REINHART  
13 December 20, 2012  
14 9:09 a.m.  
15 201 Third Street, Northwest, Suite 2200  
16 Albuquerque, New Mexico  
17  
18 PURSUANT TO THE FEDERAL RULES OF CIVIL  
19 PROCEDURE, this deposition was:  
20  
21 TAKEN BY: MR. JERRY MARKS Attorney for the Defendant  
22 Starrett  
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24 REPORTED BY: Jennifer Bean, FAPR, RDR-RMR CCR #94  
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25 For KPMG:  
26 MR. GEORGE A. SALTER  
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32 MR. STEVEN E. GALLOTTA  
33 MR. JOSEPH F. WARGANZ  
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38 Also Present: Mr. David Brown, Videographer  
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1 it's open-ended, it is worded in such a way that  
2 Citibank is reserving its rights, we would have  
3 required the company to communicate with Citibank and  
4 obtain a full and unequivocal (sic) waiver to  
5 ensure that Citibank did not declare an event of  
6 default that would impact the financial statements  
7 and our auditor's report.

8 Q. And you've had an opportunity to review the  
9 letter that's page 2 of Exhibit 98, is that right?

10 A. Yes.

11 Q. Can you tell me what you understand the  
12 letter to convey?

13 A. It's a letter from Citibank to Mr.  
14 Goldstone and Mr. Simmons and Nate Fellers -- Mr.  
15 Fellers -- that is memorializing a conversation, and  
16 expressly telling the company that it has failed to  
17 perform its obligations under the agreements between  
18 Citibank and the company. And so, therefore,  
19 Citibank is now telling the company that it has a  
20 right to declare an event of default. And that any  
21 forbearance on their part up to this point shouldn't  
22 be construed as waiving any provision in the  
23 agreement.

24 Q. As you sit here today, do you believe that  
25 knowledge of this letter would have had any impact on

1 the going concern analysis conducted by KPMG during  
2 the course of the 2007 audit?

3 A. Yes.

4 Q. And what impact do you believe it would  
5 have had on that analysis?

6 A. Well, sitting here today, it specifically  
7 is communicating that the company was not meeting its  
8 margin calls on a timely basis. And that factor  
9 would need to be considered by the company in its  
10 analysis, and documented and evaluated, and at  
11 certainly a minimum concluded upon by the company and  
12 by KPMG.

13 MR. LIUBICIC: Objection, move to strike  
14 the answer as nonresponsive.

15 Q. As you sit here today, do you believe that  
16 it's possible that it would have -- that the  
17 knowledge of this letter during the course of the  
18 2007 audit would have caused KPMG to reach a  
19 different conclusion regarding going concern?

20 MR. LEE: Objection, objection to form.

21 A. Yes.

22 Q. You know, as you sit here today, other than  
23 as it affects the OTTI and going concern analyses,  
24 what, if any, concerns does Thornburg's failure to  
25 provide this letter to KPMG during the course of the

1 2007 audit raise?

2 MR. LEE: Objection to form.

3 A. Sitting here today, knowing that this  
4 letter was not provided to us, it does raise doubts  
5 in my mind about the -- management's ethics and  
6 integrity with respect to its dealings with us as the  
7 external auditors.

8 Q. Other than being -- strike that.

9 You can put that away.

10 Ms. Reinhart, I'm now going to hand you  
11 what's been previously marked as Exhibit 97. Can you  
12 take a look at that document?

13 A. Yes.

14 Q. Have you seen this document before?

15 A. Yes.

16 Q. When did you first see it?

17 A. In 2009, September perhaps.

18 Q. And did you see it during the course of the  
19 KPMG's 2007 audit work?

20 A. No.

21 Q. What about during the restatement period?

22 A. No.

23 Q. Have you had an opportunity to look at the  
24 document?

25 A. Yes.

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